UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CONF.151/PC/WG.III/2
26 March 1991

Original: ENGLISH

PREPARATORY COMMITTEE FOR THE UNITED NATIONS
CONFERENCE ON ENVIRONMENT AND DEVELOPMENT
Second session
Geneva, 18 March - 5 April (or 12 April) 1991
Working Group III
Items 2 and 3 of the draft provisional agenda

LEGAL ISSUES FOR WORKING GROUP III

Note by the Secretariat

1. According to the terms of reference 1/ adopted by the Preparatory Committee for the United Nations Conference on Environment and Development at its second session, Working Group III is expected to prepare an annotated list of existing international agreements and international legal instruments in the environmental field, describing their purpose and scope, evaluating their effectiveness, and examining possible areas for the further development of international environmental law, in the light of the need to integrate environment and development, especially taking into account the special needs and concerns of the developing countries.

2. Working Group III is also expected to examine the feasibility of elaborating principles on general rights and obligations of States and regional integration organizations, as appropriate, in the field of environment and development, and consider the feasibility of incorporating such principles in an appropriate instrument/charter/statement/declaration, taking due account of the conclusions of all the regional preparatory conferences.

1/ See A/CONF.151/PC/L.31, annex.

3. In order to facilitate discussion in the Working Group, the present note contains a provisional list of existing international agreements and international legal instruments to be evaluated for this purpose (section I), together with tentative criteria for their evaluation in view of the further development of environmental law (section II). The note also introduces a preliminary check-list of elements that may be considered in the context of preparing principles on general rights and obligations in this field (section III).

I. PROVISIONAL LIST OF AGREEMENTS AND INSTRUMENTS

4. The range of existing international agreements and instruments in the environmental field includes formal multilateral treaties at the global and regional level; international technical rules and regulations in sectors having a bearing on environmental protection; and a number of non-binding instruments that because of their adoption at an intergovernmental level may be considered as initial steps in the development of international environmental law. The present provisional list does not include agreements or instruments that are only marginally or incidentally related to environmental protection; nor does it cover the multitude of existing arrangements dealing with bilateral/subregional environmental co-operation or with shared geographically limited resources, or the internal environmental enactments of regional economic integration organizations. While any selection or categorization will to some extent be arbitrary, the principal consideration should be the relevance of an agreement or instrument to the further development of international environmental law.

A. General environmental concerns:

Antarctic Treaty (Washington, 1 December 1959) and related agreements

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (Geneva, 18 May 1977)

Protocols I and II to the 1949 Convention Relating to the Protection of Victims of International Armed Conflicts (Geneva, 8 June 1977)

OECD Recommendations on Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution (Paris, 17 May 1977)

UNEP Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (Nairobi, 19 May 1978)

UNEP Goals and Principles of Environmental Impact Assessment (Nairobi, 17 June 1987)

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991)

B. Nature and living resources:

Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Washington, 12 October 1940) as amended

International Convention for the Regulation of Whaling (Washington, 2 December 1946) as amended

International Convention for the Protection of Birds (Paris, 18 October 1950), and related regional instruments

International Plant Protection Convention (Rome, 6 December 1951), and related regional instruments

African Convention on the Conservation of Nature and Natural Resources (Algiers, 15 September 1968) as amended

Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 2 February 1971) as amended

Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 12 November 1972)

Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973) as amended

Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979)

Convention on the Conservation of European Wildlife and Natural Habitats (Berne, 19 September 1979)

International Tropical Timber Agreement (Geneva, 18 November 1983)

International Undertaking on Plant Genetic Resources (Rome, 23 November 1983)

C. Atmosphere:

United Nations/ECE regulations concerning gaseous pollutant emissions from motor vehicles, pursuant to the 1958 Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (Geneva, 1 August 1970, as amended and supplemented to 1991)

Convention on Long-range Transboundary Air Pollution (Geneva, 13 November 1979), and related protocols

UNEP Provisions for Co-operation between States on Weather Modification (Nairobi, 29 April 1980)

ICAO Annex 16 (II) on aircraft engine emissions, to the 1944 Convention on International Civil Aviation (Montreal, 30 June 1981, as amended in 1988)

Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985), and Montreal Protocol (16 September 1987) as amended

D. Marine environment:

International Convention for the Prevention of Pollution of the Sea by Oil (London, 12 May 1954) as amended

International Maritime Dangerous Goods Code (London, 16 September 1965) as amended

Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (Bonn, 9 June 1969 and 13 September 1983)

International Convention Relating to Intervention on the High Seas in Case of Oil Pollution Casualties (Brussels, 29 November 1969) and related protocol as amended

International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969) and related protocol as amended

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Brussels, 18 December 1971) as amended

Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo, 15 February 1972) as amended

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London, 29 December 1972) as amended

International Convention for the Prevention of Pollution from Ships (London, 2 November 1973) and 1978 Protocol as amended

Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki, 22 March 1974) as amended

Convention on the Prevention of Marine Pollution from Land-based Sources (Paris, 4 June 1974) as amended

Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona, 16 February 1976) and related protocols

Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources (London, 1 May 1977)

Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait, 23 April 1978) and related protocols

Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan, 23 March 1981) and related protocol

Convention for the Protection of the Marine Environment and Coastal Area of the South-east Pacific (Lima, 12 November 1981) and related protocols

Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (Jeddah, 14 February 1982) and related protocol

UNEP Guidelines Concerning the Environment Related to Offshore Mining and Drilling within the Limits of National Jurisdiction (Nairobi, 31 May 1982)

United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982)

Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena, 24 March 1983) and related protocols

UNEP Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-based Sources (Nairobi, 24 May 1985)

Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi, 21 June 1985) and related protocols

Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea, 24 November 1986) and related protocols

International Convention on Oil Pollution Preparedness, Response and Co-operation (London, 29 November 1990)

E. Hazardous substances and processes:

ECOSOC Recommendations on the Transport of Dangerous Goods (Geneva, 26 April 1957, as revised in 1990)

European Agreement Concerning the International Carriage of Dangerous Goods by Road (Geneva, 30 September 1957) as amended

Convention on Third Party Liability in the Field of Nuclear Energy (Paris, 29 July 1960) as amended

Vienna Convention on Civil Liability for Nuclear Damage (Vienna, 21 May 1963) and related protocol

Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (Moscow, 5 August 1963)

European Agreement on the Restriction of the Use of Certain Detergents in Washing and Cleaning Products (Strasbourg, 16 September 1968)

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction (London, Moscow, Washington, 10 April 1972)

OECD Procedures and Requirements for Anticipating the Effects of Chemicals on Man and in the Environment (Paris, 7 July 1977)

OECD Decision on the Mutual Acceptance of Data in the Assessment of Chemicals (Paris, 12 May 1981) and related recommendations

FAO International Code of Conduct on the Distribution and Use of Pesticides (Rome, 19 November 1985) as amended

Conventions on Early Notification of a Nuclear Accident, and on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Vienna, 26 September 1986)

UNEP London Guidelines for the Exchange of Information on Chemicals in International Trade (Nairobi, 17 June 1987) as amended

UNEP Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes (Nairobi, 17 June 1987)

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel, 22 March 1989)

Convention on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (Geneva, 10 October 1989)

Convention on the Ban of the Import into Africa and the Control of Transboundary Movements and Management of Hazardous Wastes within Africa (Bamako, 30 January 1991)

F. Working environment:

Convention Concerning the Protection of Workers Against Ionizing Radiations (Geneva, 22 June 1960)

Convention Concerning Protection Against Hazards of Poisoning Arising from Benzene (Geneva, 23 June 1971)

Convention Concerning Prevention and Control of Occupational Hazards Caused by Carcinogenic Substances and Agents (Geneva, 26 June 1974)

Convention Concerning Protection of Workers Against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration (Geneva, 20 June 1977)

Convention Concerning Occupational Safety and Health and the Working Environment (Geneva, 22 June 1981)

Convention Concerning Safety in the Use of Asbestos (Geneva, 24 June 1986)

Convention on Safety in the Use of Chemicals at Work (Geneva, 24 June 1990).

II. CRITERIA FOR EVALUATION

5. In carrying out an evaluation of the effectiveness of existing agreements and instruments, the Working Group may wish to focus on a number of common criteria, which could also provide guidance in the identification of gaps and possible areas for the further development of international environmental law. (Some of the criteria listed may not be applicable to declaratory/non-binding instruments).

A. Participation:

1. What is the current range of membership in existing environmental agreements and instruments, especially as regards developing countries?

2. Which have been the major obstacles (if any) preventing wider participation, especially by developing countries?

3. In the case of geographically limited agreements and instruments, what are the possibilities and the advantages/disadvantages of broadening the range of participation?

4. To what extent has technical assistance been provided to developing countries for implementing international agreements and legal instruments in the field of environment?

NOTE: Current information on the membership (signature, ratification, accession) status for most of the agreements and instruments listed in section I above is provided, on an annual basis, in the UNEP "Register of International Treaties and Other Agreements in the Field of the Environment" (Nairobi, UNEP/GC.15/Inf.2, 1989 and supplements, available in all official languages), and in the United Nations publication of "Multilateral Treaties Deposited with the Secretary-General" (New York, ST/LEG/SER.E/8, 1989, available in English and French). Technical assistance to Governments for the necessary implementing measures and institutions has been provided ad hoc by UNEP and by several specialized agencies within their areas of competence, and could play an important role in promoting wider participation.

B. Monitoring and reporting:

1. To what extent have the environmental objectives of international agreements and instruments been met, and how is goal achievement measured?

2. How is compliance by parties with their obligations under these agreements and instruments monitored?

3. How do parties report on their performance in implementing agreements and instruments, and to what extent have they complied with reporting duties?

4. Which are the specific requirements (if any) of data supply and data disclosure, and to what extent have they been met by the parties?

5. Which have been the main obstacles (if any) to reporting, data supply and data disclosure?

6. Which possibilities exist to follow up on non-compliance, and to what extent have they been used?

7. Which mechanisms, including fact-finding procedures, are available to deal with disputes over implementation and to what extent have they been used?

NOTE: A number of international environmental agreements and instruments contain provisions for compliance control and/or an obligation for parties to submit, through the secretariat, regular performance reports for public review. Periodic progress reports on the implementation of specific instruments (such as the UNEP Guidelines on Shared Natural Resources) are also submitted to the General Assembly through the UNEP Governing Council, based on performance reports solicited from Governments and organizations. A major part of compliance control for many environmental agreements and instruments consists of the collection and analysis of data to substantiate and verify implementation by the parties. Improving the process of compiling, reviewing and disseminating national data therefore could contribute to the effectiveness of such agreements and instruments.

C. Information:

1. In which form and in which languages are the texts of existing agreements and instruments published and disseminated?

2. How is current information on the operation and implementation of international agreements and instruments made available to Governments, to the industries concerned and to the general public?

3. What additional materials are available to provide guidance for the implementation of international agreements and instruments at the national level?

4. To what extent is the above information used in international and national training and education programmes?

NOTE: Further to official publication of treaty texts in the United Nations Treaty Series (which, however, suffers from a general printing backlog of more than 10 years) several unofficial collections of international environmental agreements and instruments exist, including the UNEP Reference Series of Selected Multilateral Treaties in the Field of the Environment (available in English and French) and the UNEP Environmental Law Guidelines and Principles (available in all official languages). In addition, secretariats in charge of administering some of these agreements and instruments have issued public information material or regular information bulletins concerning these instruments. The United Nations Institute for Training and Research (UNITAR) has undertaken a number of programmes which include the promotion of international legal instruments for environment and development. Several non-governmental institutions and associations play an important role in this field. Systematic collection and wider dissemination of the information available, especially for the benefit of developing countries, could also assist in broadening participation.

D. Operation and adjustment:

1. Which are the institutional arrangements for international administration of existing agreements and instruments?

2. What are the costs of international administration (secretariat, meetings, programmes) of agreements and instruments, and how are they financed?

3. Which are the main cost elements of national participation in existing agreements and instruments and which possibilities exist to reduce participation costs for developing countries?

4. Which mechanisms are available to ensure periodic review and timely adjustment of international agreements and instruments, and to what extent have they been used?

5. How do these arrangements and mechanisms ensure the effective participation of (a) developing countries, and (b) non-governmental participants, including the industries concerned and the scientific community?

NOTE: The process by which international law-making treaties are formulated and brought into force was extensively examined by the General Assembly in the United Nations Review of the Multilateral Treaty-Making Process (ST/LEG/SER.B/21), 1981. Information on the actual operation of treaty régimes will have to be compiled from a cross-section of reports to the governing bodies concerned, together with available external analyses. In view of the need for rapid and frequent adjustment of environmental agreements and instruments to changing circumstances and to scientific and technological progress, flexible amendment procedures have proved essential. In addition, several existing agreements provide for periodic review conferences to assess implementation and policy adaptation. Hence, the capacity to make optimal use of scientific inputs in the review process is among the essential criteria for effectiveness.

E. Codification programming:

1. Which new drafts or draft revisions of existing agreements and instruments in the environmental field are currently under preparation?

2. To what extent is drafting co-ordinated with related work regarding other agreements and instruments?

3. Which are the remaining gaps that need to be covered by legal provisions?

4. To what extent are mechanisms other than formal agreements or instruments contributing to the development of international law in the field of the environment?

NOTE: An "in-depth review" of international environmental law, summarizing the activities of competent intergovernmental and non-governmental organizations, was carried out by UNEP (UNEP Report No. 2, 1981, in English only), as part of preparations for the long-term "Programme for the Development and Periodic Review of Environmental Law" adopted in 1982 by

Governing Council decision 10/21 (endorsed by the General Assembly in its resolution 37/217); an update of the review is planned for 1991. Summaries of "legislative" activities within the United Nations system are published in the United Nations Juridical Yearbook (up to 1984, in English, French and Spanish). A comprehensive report on this subject will be prepared by the United Nations Office of Legal Affairs for submission to the General Assembly at its forty-sixth session, as part of the implementation of the United Nations Decade of International Law. Furthermore, some of the regional bodies in charge of administering environmental conventions have initiated direct consultations to avoid potential conflicts or overlaps; e.g., as regards atmospheric pollution of the marine environment, between the Executive Body for the Convention on Long-range Transboundary Air Pollution (within the framework of the United Nations Economic Commission for Europe), and the independent regional commissions for marine environment protection in the Baltic Sea and north-east Atlantic area. There also is a considerable amount of standard-setting ongoing that is not based on specific environmental agreements and instruments but on the constitutional functions of existing international bodies. An overview of current and planned drafting work in this field could assist in harmonizing global and regional codification programmes.

III. CHECK-LIST OF ELEMENTS FOR THE ELABORATION OF PRINCIPLES

6. When considering the feasibility of an instrument/charter/statement/declaration incorporating principles on general rights and obligations in the field of environment and development, the Working Group may wish to start by determining the elements to be included in such an instrument ("Earth Charter"). The elements enumerated in the check-list which follows have been compiled from a number of texts and proposals, including draft provisions made available to the Preparatory Committee and the secretariat. Inclusion in the check-list is not intended to prejudge whether or to what extent these elements reflect existing international rules of conduct, or in what manner they might become rules of conduct.

A. Basic duties:

1. Common responsibility of nations and peoples for the survival/integrity/sovereignty of the Earth

2. Avoidance of harm to future generations

3. Equitable sharing of responsibilities and benefits

4. Protection of individual rights to environment and development

5. Protection of indigenous peoples

6. Preservation of biological diversity/genetic viability/optimum sustainable yield

7. Access to information on environmental risks

8. Promotion of environmental education and awareness

B. Principles of decision-making:

1. Precedence of long-term sustainable development over short-term special interests

2. Rational accounting of environmental assets and resources

3. Full allocation of environmental costs to economic activities

4. Prior assessment of environmental risks

5. Burden of proof for environmental safety of projects and products

6. Avoidance of irreversible environmental harm

7. Precautionary principle

8. Priority given to poverty alleviation

9. Procedures for environmental standard-setting, monitoring and reporting

C. Principles of transnational relations:

1. Avoidance of harm to other nations and to the Earth as a whole

2. Information and prior consultation on transnational environmental risks

3. Principle of prior informed consent regarding transnational movements of hazardous substances and wastes

4. Notification and assistance in environmental emergencies

5. Avoidance of hostile environmental modifications

6. Peaceful settlement of environmental disputes

7. Non-discriminatory treatment for foreign victims of transnational environmental harm

8. Procedures for cessation of, and compensation for, transnational environmental harm.

NOTE: Starting from the Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972) as a baseline, and taking due account of the conclusions of all the regional preparatory conferences, a number of further reference sources are available both within and outside the United Nations system, including the "World Charter for Nature" (General Assembly resolution 37/7 of 28 October 1982) and the "Proposed Legal Principles for Environmental Protection and Sustainable Development" appended to the 1987 Report of the World Commission on Environment and Development.